

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nicholas Venduras	Team: Squad #16	CCRB Case #: 202105227	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/25/2021 1:55 AM, Wednesday, 08/25/2021 2:12 AM	Location of Incident: Intersection South West Corner Sutter Avenue and Powell Street 73rd Precinct Stationhouse	18 Mo. SOL 2/25/2023	Precinct: 73		
Date/Time CV Reported Wed, 08/25/2021 9:45 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/01/2021 5:23 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Michael Farrell	03242	948952	WARRSEC
2. SGT Samuel Hui	03588	953978	075 DET
3. POM James Fowler	03099	967512	073 PCT
4. POM Evrett Kerr	28828	967139	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM David Damico	16358	957509	073 PCT
2. POM Christophe Kalinowski	22920	962515	073 PCT
3. POM Gregory Clena	08078	964447	073 PCT
4. POM Jonathan Aquino	15569	957337	073 PCT
5. PO Christy George	01202	963534	BX COURT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Michael Farrell	Abuse: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Michael Farrell stopped § 87(2)(b)	
B.SGT Samuel Hui	Abuse: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui stopped § 87(2)(b)	
C.SGT Samuel Hui	Abuse: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui stopped § 87(2)(b)	
D.SGT Samuel Hui	Abuse: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui threatened § 87(2)(b) with the use of force.	
E.SGT Samuel Hui	Discourtesy: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
F.SGT Samuel Hui	Abuse: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui frisked § 87(2)(b)	
G.SGT Samuel Hui	Abuse: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui searched § 87(2)(b)	
H.SGT Michael Farrell	Force: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Michael Farrell used physical force against § 87(2)(b)	
I.SGT Samuel Hui	Force: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui used physical force against § 87(2)(b)	
J.POM James Fowler	Abuse: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Police Officer James Fowler did not obtain medical treatment for § 87(2)(b)	
K.POM James Fowler	Force: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Police Officer James Fowler struck § 87(2)(b) with a radio.	
L.SGT Michael Farrell	Abuse: At the 73rd Precinct stationhouse, Sergeant Michael Farrell strip-searched § 87(2)(b)	
M.POM James Fowler	Discourtesy: At the 73rd Precinct stationhouse, Police Officer James Fowler spoke discourteously to § 87(2)(b)	
N.POM Everett Kerr	Abuse: At the 73rd Precinct stationhouse, Police Officer Everett Kerr threatened § 87(2)(b) with the use of force.	

Case Summary

On August 25, 2021, § 87(2)(b) filed this complaint over the phone with IAB and was assigned log § 87(2)(b). The CCRB received this case on September 1, 2021.

On August 25, 2021, at approximately 1:55 AM, Sergeant Michael Farrell and Sergeant Samuel Hui of the 73rd Precinct stopped § 87(2)(b) as he sat on his moped at the southwest corner of Sutter Avenue and Powell Street in Brooklyn (**Allegations A & B: Abuse of Authority**, § 87(2)(g)). Sgt. Hui also stopped § 87(2)(b) § 87(2)(b) friend who was nearby (**Allegations C: Abuse of Authority**, § 87(2)(g)).

As Sgt. Hui walked towards § 87(2)(b) he removed his taser from its holster and allegedly pointed it at § 87(2)(b) and indicated he would use it on him while using profanity (**Allegation D: Abuse of Authority**, § 87(2)(g) & **Allegation E: Discourtesy**, § 87(2)(g)). Sgt. Hui frisked § 87(2)(b) and allegedly searched his pocket (**Allegation F: Abuse of Authority**, § 87(2)(g) & **Allegation G: Abuse of Authority**, § 87(2)(g)).

At the same time, Sgt. Farrell was speaking with § 87(2)(b) who at one point attempted to leave the area. Sgt. Farrell and Sgt. Hui subsequently wrestled with § 87(2)(b) and brought him to the ground (**Allegations H & I: Force**, § 87(2)(g)). Sgt. Farrell and Sgt. Hui handcuffed § 87(2)(b) and called additional units for assistance.

Other officers, including Police Officer James Fowler and Police Officer Everett Kerr of the 73rd Precinct, arrived. PO Fowler and other officers transported § 87(2)(b) to the 73rd Precinct where PO Fowler allegedly ignored § 87(2)(b) request for medical attention (**Allegation J: Abuse of Authority**, § 87(2)(g)). PO Fowler allegedly beat him with his radio during this transport (**Allegation K: Force**, § 87(2)(g)).

At the 73rd Precinct stationhouse, Sgt. Farrell ordered § 87(2)(b) to be strip-searched (**Allegation L: Abuse of Authority**, § 87(2)(g)). While attempting to perform this strip-search, PO Fowler allegedly spoke discourteously to § 87(2)(b) (**Allegation M: Discourtesy**, § 87(2)(g)). PO Kerr also allegedly threatened § 87(2)(b) with force (**Allegation N: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was charged with possession of a loaded firearm, resisting arrest, obstructing government administration, and operating an unregistered vehicle.

The NYPD Legal Department provided ten Body-Worn Camera (BWC) videos in regard to this case (**Board Review 1**). The New York City Housing Authority provided 11 security camera videos in regard to this case (**Board Review 2 & Board Review 3**).

Findings and Recommendations

Allegation (A) Abuse of Authority: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Michael Farrell stopped § 87(2)(b)

Allegation (B) Abuse of Authority: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui stopped § 87(2)(b)

Allegation (C) Abuse of Authority: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui stopped § 87(2)(b)

Allegation (D) Abuse of Authority: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui threatened § 87(2)(b) with the use of force.

Allegation (E) Discourtesy: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui spoke discourteously to § 87(2)(b)

Allegation (F) Abuse of Authority: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui frisked § 87(2)(b)

Allegation (G) Abuse of Authority: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui searched § 87(2)(b)

Allegation (H) Force: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Michael Farrell used physical force against § 87(2)(b)

Allegation (I) Force: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Sergeant Samuel Hui used physical force against § 87(2)(b)

§ 87(2)(b) provided a statement to the CCRB on September 14, 2021 (**Board Review 4**). On August 25, 2021, at approximately 1:55 AM, § 87(2)(b) and § 87(2)(b) were on the southwest corner of Sutter Avenue and Powell Street in Brooklyn, which is outside § 87(2)(b) NYCHA building. § 87(2)(b) was still wearing his helmet after locking up his moped to a short fencing around a tree planted in the sidewalk. § 87(2)(b) stated that the moped had a 49cc engine and is considered a Schedule-C moped, which he thought was too small to require registration. However, § 87(2)(b) had already begun registration paperwork with the DMV.

As § 87(2)(b) and § 87(2)(b) remained at the location, Sgt. Farrell and Sgt. Hui approached them (**Board Review 4**). Sgt. Hui approached § 87(2)(b) and told him not to move while holding his taser. When § 87(2)(b) asked what the problem was, Sgt. Hui said something to the effect of, “Don’t move your fucking hands.”

During § 87(2)(b) CCRB statement on January 5, 2021, § 87(2)(b) recalled Sgt. Hui removing his taser and saying, “Please don’t move before I tase you,” as he approached (**Board Review 5**). § 87(2)(b) stated that Sgt. Hui said he was fidgeting in his pockets. § 87(2)(b) explained it was only a phone and Sgt. Hui then felt over his left pants pocket. Sgt. Hui also reached inside and may have pulled the phone out, but § 87(2)(b) did not remember if he actually did so. Sgt. Hui then went over to § 87(2)(b) and told him to get off his moped, saying he was not allowed to ride it on the sidewalk. § 87(2)(b) stated that the moped was never turned on.

In his CCRB statement, § 87(2)(b) stated that Sgt. Farrell said he was riding his moped on the sidewalk, which he claimed to appear stolen since it did not have a license plate (**Board Review 4**). Sgt. Farrell said many similar mopeds have been stolen in the area recently. § 87(2)(b) told Sgt. Farrell his registration documentation and ID were inside his car which was parked nearby on the northeast side of the intersection. At that point § 87(2)(b) noticed Sgt. Hui had turned his attention from § 87(2)(b) to him.

§ 87(2)(b) believed Sgt. Farrell was going to let him retrieve his documentation, so he began walking towards his car, but Sgt. Hui grabbed his right wrist (**Board Review 4**). § 87(2)(b) pulled

away, but Sgt. Farrell grabbed him as well. At that point they threw him to the ground and placed § 87(2)(b) on his stomach. § 87(2)(b) tried to give them his left hand saying he was not resisting, but the officers knelt on his back and used their forearms on his upper back and neck area to push him into the sidewalk. After the officers handcuffed § 87(2)(b) § 87(2)(b) and § 87(2)(b) repeatedly told the officers he owned the moped, but an officer replied it was unregistered.

Shortly after, an additional three or four officers arrived, including PO Fowler, who would later be listed as his arresting officer and PO Kerr (**Board Review 4**). They searched § 87(2)(b) waistband following his arrest and found what § 87(2)(b) described as an inoperable .22 pistol and charged him with possession of a weapon and his moped was confiscated. At the time of his interview, he had not yet retrieved his moped. § 87(2)(b) was allowed to leave without a summons or being arrested.

§ 87(2)(b) remembered seeing a gun in an officer's hand just after they handcuffed § 87(2)(b) and got him to his feet (**Board Review 5**). However, everything happened so fast, § 87(2)(b) was unsure where they retrieved the gun from.

Sgt. Farrell provided a statement to the CCRB on April 6, 2022 (**Board Review 6**). Sgt. Farrell referred to § 87(2)(b) moped as a "motorcycle" during his interview. At approximately 1:57 AM on August 25, 2021, Sgt. Farrell and Sgt. Hui were patrolling Sutter Avenue near Powell Street in Brooklyn, which he knew was a high-crime area with recent multiple shootings from when he worked in Narcotics. He was also aware the area had many motorcycle thefts.

Sgt. Farrell observed § 87(2)(b) wearing a helmet while sitting on a motorcycle on the sidewalk, which is not allowed, but could not tell if the motorcycle was on (**Board Review 6**). When he and Sgt. Hui first drove by, Sgt. Farrell could not tell if the motorcycle had a license plate. Sgt. Farrell told Sgt. Hui, who was driving, they should stop these individuals based on the violations he observed. Sgt. Hui then made a U-turn, at which point it appeared to Sgt. Farrell that § 87(2)(b) was attempting to start his motorcycle based on the way § 87(2)(b) was reaching around the ignition area. At that point, the two sergeants exited their vehicle, to prevent § 87(2)(b) from driving away since he would have had to drive into them if he attempted to leave.

Sgt. Farrell asked § 87(2)(b) for his ID while Sgt. Hui spoke to § 87(2)(b) but since he was so focused on § 87(2)(b) he did not notice what Sgt. Hui and § 87(2)(b) were doing or saying (**Board Review 6**). § 87(2)(b) said he did not have his ID on him but would be able to get his license, however, Sgt. Farrell told him it was not necessary. At that point § 87(2)(b) stepped off his motorcycle and ran away on foot. While doing so, it appeared § 87(2)(b) shoved his motorcycle at Sgt. Farrell.

Sgt. Farrell saw Sgt. Hui grab § 87(2)(b) arm and they swung around into a nearby fence (**Board Review 6**). Sgt. Farrell then went to assist Sgt. Hui and the helped bring § 87(2)(b) to the ground. § 87(2)(b) struggled against the sergeants causing all three fall and knocking Sgt. Farrell's BWC off his chest. Sgt. Farrell was on § 87(2)(b) right side as § 87(2)(b) tried to lock his arms in place underneath himself and his hands at his groin area. Sgt. Farrell believed this action was an attempt to conceal the weapon they would later find on him. Sgt. Farrell wrestled with § 87(2)(b) and despite § 87(2)(b) attempts to keep his arms underneath him body, the two sergeants were able to handcuff him after a brief struggle by taking hold of each arm and bringing them behind his back.

Once they stood him up, § 87(2)(b) kept turning his body away from Sgt. Farrell as he held onto him to perform a search (**Board Review 6**). At that point, Sgt. Hui, who had a better vantage point, observed a bulge in § 87(2)(b) waistband and said, "It's in front of him." When Sgt. Hui flipped it

up out of § 87(2)(b) waistband, Sgt. Farrell saw this bulge was a firearm. At that point, Sgt. Farrell and Sgt. Hui arrested § 87(2)(b) and called for additional units over the radio. Sgt. Farrell did not observe any injuries on § 87(2)(b) at that time.

Sgt. Hui was interviewed at the CCRB on June 16, 2022, and also referred to § 87(2)(b) moped as a “motorcycle” (**Board Review 7**). While on patrol, Sgt. Farrell alerted Sgt. Hui to § 87(2)(b) non-plated motorcycle parked on the sidewalk. From his position though, Sgt. Hui could not tell if the motorcycle was on and did not see the missing plates at that point but later saw they were absent. In Sgt. Hui’s experience, motorcycle stops can be dangerous, so he considered § 87(2)(b) to be a bigger threat since he was on his motorcycle rather than just on foot. Sgt. Hui had not seen § 87(2)(b) or § 87(2)(b) prior to this incident.

As the sergeants exited their vehicle, § 87(2)(b) reached down to the side of the motorcycle they could not see, which caused Sgt. Hui to be concerned he might have a weapon or start his motorcycle (**Board Review 7**). Sgt. Hui instructed § 87(2)(b) to “not take off” and they continued to walk closer to the two men. As he approached, Sgt. Hui removed his taser from its holster because he could not see § 87(2)(b) hands since they were blocked by the windshield, but it looked as if he was reaching for the motorcycle’s ignition area. He removed it only for “a second” before putting it back and did not recall saying, “Don’t move your fuckin’ hands” or making any threat of force.

While Sgt. Farrell walked towards § 87(2)(b) Sgt. Hui approached § 87(2)(b) who he described as “right next to” the moped, from the right side of § 87(2)(b) body (**Board Review 7**). As he approached § 87(2)(b) Sgt. Hui saw § 87(2)(b) left hand reach towards his left pocket area to grab and tap the outside of his shorts. When he reached § 87(2)(b) Sgt. Hui briefly tapped § 87(2)(b) left pants pocket but did not reach inside. In his experience, Sgt. Hui, who has recovered over 200 guns, learned when a person taps and grabs in such a way, there is usually a weapon involved. He acknowledged he did not see any bulges or shapes of concern on § 87(2)(b) but Sgt. Hui could not see his left side, so for officer safety Sgt. Hui checked for weapons. Motorcycle stops can be dangerous, so Sgt. Hui did not want to turn his back to § 87(2)(b) before he was sure it was safe to do so. Sgt. Hui explained to § 87(2)(b) very briefly his concerns over the grabbing and tapping motions but was unable to get into depth due to § 87(2)(b) actions which followed. Immediately after tapping § 87(2)(b) pocket, Sgt. Hui heard Sgt. Farrell ask for § 87(2)(b) ID. He then saw § 87(2)(b) reach around the motorcycle before he attempted to flee on foot.

Sgt. Hui was close enough to grab § 87(2)(b) wrist and guide him towards himself, but § 87(2)(b) struggled to get away (**Board Review 7**). While doing so, § 87(2)(b) kept grabbing for his own front waist or groin area which led Sgt. Hui to believe § 87(2)(b) had a weapon and was trying to get it. Sgt. Hui did his best to maintain control of § 87(2)(b) hand and in the struggle, they fell to the ground together. Over the next two minutes, Sgt. Hui and § 87(2)(b) wrestled, or grappled, on the ground but he did not punch § 87(2)(b) or use any other force to handcuff § 87(2)(b) in order to maintain control of the situation.

Upon Sgt. Hui searching him after a lawful arrest, Sgt. Hui discovered a firearm in his groin area and other officers who arrived on the scene later put on gloves to retrieve it from § 87(2)(b) pants (**Board Review 7**). This statement is different than Sgt. Farrell’s regarding if § 87(2)(b) was already under arrest or not. PO Damico’s BWC shows he, PO Fowler, and PO Kerr arriving and PO Kerr using gloves to retrieve the firearms at timestamp 1:15 (**Board Review 40**). § 87(2)(b) arrest report shows he was charged with operating an unregistered vehicle, obstruction of governmental administration in the second degree, resisting arrest, and his top charge was criminal

possession of loaded firearm in the second degree (**Board Review 24**). Officers then placed § 87(2)(b) in an RMP and transported him to the 73rd Precinct stationhouse (**Board Review 7**). Sgt. Hui did not have any further interaction with § 87(2)(b) but acknowledged he may have walked by him once or twice at the stationhouse. Sgt. Hui did not know either § 87(2)(b) or § 87(2)(b) prior to this incident.

Sgt. Hui's and Sgt. Farrell's BWC videos do not clearly show the struggle between the officers and § 87(2)(b). However, Sgt. Hui's BWC does show the officers approaching § 87(2)(b) and § 87(2)(b) (**Board Review 8 & Board Review 9**). NYCHA provided security camera footage which shows this incident between timestamp 54:00 and timestamp 1:00:17 of the exterior camera facing Sutter Avenue and Powell Street (**Board Review 10**). This angle shows the struggle more clearly.

Sgt. Hui's BWC footage begins with him driving a police vehicle and exiting at timestamp 00:49 (**Board Review 8**). At timestamp 1:00, Sgt. Hui walks towards § 87(2)(b) and § 87(2)(b) as § 87(2)(b) is sitting astride a stationary moped on the sidewalk. § 87(2)(b) wearing a white t-shirt and red basketball shorts, is leaning against a fence about five or six feet to the right of § 87(2)(b) on the opposite side of the sidewalk. When the sound comes on at timestamp 1:00, the very first audible word sounds like "taser" and seems to be spoken by either § 87(2)(b) or § 87(2)(b). Within two seconds, Sgt. Hui tells § 87(2)(b) to get off the moped while removing his taser, which can be seen briefly at timestamp 1:02. At the same time, § 87(2)(b) states § 87(2)(b) usually parks it there, but Sgt. Hui says § 87(2)(b) was trying to leave. At timestamp 1:10, Sgt. Hui tells § 87(2)(b) not to move and reaches towards him with his left hand. His left hand touches § 87(2)(b) right hip only briefly, but his right hand is mostly off-camera and seems to tap § 87(2)(b) left leg. It is unclear if Sgt. Hui reaches inside § 87(2)(b) pocket due to the angle of the BWC. Sgt. Hui steps back at timestamp 1:14 and tells § 87(2)(b) he kept clenching onto his side as he approached, which caused him to think § 87(2)(b) was concealing something.

At timestamp 1:21, § 87(2)(b) gets off his moped and points behind Sgt. Hui (**Board Review 8**). § 87(2)(b) begins to walk forward but Sgt. Hui grabs his right arm with both hands and at timestamp 1:27, § 87(2)(b) pulls away from Sgt. Hui and tries to run. At that point Sgt. Hui's BWC falls off and lands face down, blocking the image. At timestamp 1:45 a voice can be heard asking "What did you run off for?" and § 87(2)(b) says that the vehicle is his. At timestamp 2:50 § 87(2)(b) repeatedly denies attempting to run off. At timestamp 3:25, § 87(2)(b) asks to go to his car to retrieve his identification to provide the officers. At timestamp 5:11, Sgt. Hui picks up his BWC to place it back on his uniform.

The NYCHA security footage shows Sgt. Hui and Sgt. Farrell arriving at the corner of Sutter Avenue and Powell Street and exiting their unmarked vehicle at timestamp 54:16 (**Board Review 10**). Sgt. Hui removes his taser from his holster briefly at timestamp 54:28 but puts it back about five seconds later and does not point it at anyone, keeping it towards the ground. He approaches § 87(2)(b) leaning against the fence on the edge of a grassy area and is the only civilian visible. Sgt. Farrell walks off-camera towards § 87(2)(b) location as established in Sgt. Hui's BWC.

At timestamp 54:49, § 87(2)(b) attempts to leave the scene, but Sgt. Hui grabs his arm, and § 87(2)(b) appears to try to pull away and run, but Sgt. Hui hangs on (**Board Review 10**). They struggle and spin around before Sgt. Farrell joins in guiding § 87(2)(b) toward the fence at timestamp 54:54. At timestamp 54:56, Sgt. Hui and Sgt. Farrell bring § 87(2)(b) to the ground just in front of the fence and Sgt. Farrell appears to fall underneath him. The officers and § 87(2)(b) move out of frame, and it is unclear what they are doing. PO Fowler, PO Kerr, and PO David Damico of the 73rd Precinct arrive at timestamp 56:59 and at timestamp 57:05, Sgt. Farrell stands § 87(2)(b) up and the newly-arrived officers check his pants.

Sgt. Farrell's BWC begins with § 87(2)(b) already on the ground and Sgt. Farrell holding him by the top of the right arm with his right hand and placing his left hand on the left side of § 87(2)(b) back, while Sgt. Hui has his hand on § 87(2)(b) left shoulder (**Board Review 9**). § 87(2)(b) tries to get push himself off the ground but both sergeants hold him in place. After eight seconds, the BWC gets pressed up against § 87(2)(b) and the image is obscured before the camera gets knocked off Sgt. Farrell. At that point the BWC shows only portions of § 87(2)(b) and Sgt. Farrell's head. Sgt. Farrell reattaches his BWC at timestamp 1:00 as the sound comes on and at timestamp 1:17, he searches § 87(2)(b) who is still on the ground. § 87(2)(b) and Sgt. Farrell argue about whether § 87(2)(b) tried to run away as Sgt. Farrell searches § 87(2)(b) pockets. At timestamp 1:25, Sgt. Farrell pulls out a wallet or cellphone and folded cash with \$100 and \$20 bills visible out of § 87(2)(b) right pants pocket with his left hand. At timestamp 2:03 Sgt. Farrell and Sgt. Hui lift § 87(2)(b) to his feet as PO Fowler, PO Kerr and Police Officer David Damico of the 73rd Precinct arrive on scene. Sgt. Hui says § 87(2)(b) has "a gun" in his waist at timestamp 2:06 and reaches for the front section of § 87(2)(b) pants, but § 87(2)(b) body blocks exactly what Sgt. Hui is doing. At timestamp 2:18 Sgt. Hui asks of the newly arrived officers who has gloves and PO Kerr removes a pair from his back pocket and uses them to retrieve the gun. At timestamp 2:29, a pistol is seen in PO Kerr's right hand. At 2:37 Sgt. Farrell hands § 87(2)(b) items, including the cash, to PO Kerr.

In their CCRB statements, PO Kerr and PO Fowler stated that upon arriving at the location, PO Kerr retrieved a firearm from § 87(2)(b) waistband (**Board Review 11 and 12**).

Based on the Google Street view taken in July of 2021, there is no sign allowing sidewalk parking for motorcycles, motor scooters, or mopeds § 87(2)(b) parked his moped (**Board Review 15**). PO Fowler's BWC captures § 87(2)(b) bike with no license plates attached at timestamp 1:04 and 5:29 (**Board Review 13**).

According to the parking laws posted on 311.nyc.gov, the official website of New York City, "it is illegal to park motorcycles, motor scooters, and mopeds on the sidewalk" (**Board Review 16**). New York City Department of Transportation (DOT)'s Traffic Rules Section 4-07(c)(3)(ii) states, with the exception of pushing one, it is illegal to ride, park or operate such a vehicle on any sidewalk except where permitted by signage (**Board Review 17; page 27**). The *Electric Bicycles and More E-mobility Chart* published by New York City DOT, clarifies that e-bikes have operable pedals, where limited use motorcycles and mopeds do not (**Board Review 18**). This chart indicates all mopeds must be registered with the DMV and have license plates and VINs.

Patrol Guide Procedure 212-11 states civilians are allowed to walk away from officers in Level 1 and Level 2 encounters since the level of suspicion of criminal activity is not high enough to detain an individual (**Board Review 19**). However, a Level 3 stop gives officers the right to prevent an individual from ending the encounter since officers would have an "individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor."

Based on the video evidence and civilian and MOS testimony, it is undisputed that § 87(2)(b) parked his moped on the sidewalk. Without signage allowing him to do so, § 87(2)(b) parked there illegally, as per the traffic laws of New York City. BWC also shows § 87(2)(b) vehicle did not have license plates, which it should have since it was categorized as a Class – C moped. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Although it is undisputed that § 87(2)(b) committed violations, § 87(2)(b) was only standing near § 87(2)(b) and had not committed any crimes or violations. He was not on the moped and was at least five or six feet away from § 87(2)(b). He was not “right next to” the moped as Sgt. Hui stated. § 87(2)(b) simply stood on the sidewalk, leaning against the fence, and had nothing to do with how § 87(2)(b) parked or registered his vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Patrol Guide Procedure 212-11 states that an officer is allowed to frisk an individual when an officer “reasonably suspects the person is armed and dangerous” (**Board Review 19**). A frisk is defined as “carefully limited running of the hands over the outside of a person’s clothing” to feel for a deadly or dangerous weapon, instrument, or article. Should an officer reasonably suspect an object felt during the frisk is a weapon or dangerous instrument, the officer may search that individual by placing their hands inside pockets or interior portions of a person’s clothing to remove it.

As the Patrol Guide instructs, officers must have a reasonable suspicion the person being frisked is armed and dangerous. Sgt. Hui stated that he frisked § 87(2)(b) because § 87(2)(b) reached towards his left pocket and grab and tap the outside of his shorts. § 87(2)(g)

§ 87(2)(g)

Furthermore, Sgt. Hui’s account of not being able to see a theoretical bulge on the opposite side of a person’s body does not indicate that a bulge or a reasonable danger exists. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

While § 87(2)(b) testified Sgt. Hui told § 87(2)(b) to not move his “fucking hands,” both § 87(2)(b) and Sgt. Hui had differing versions of events. § 87(2)(b) did not allege Sgt. Hui used profanities and Sgt. Hui did not recall saying, “fucking hands” during this interaction. Such a statement was not captured on BWC, but it is unclear whether Sgt. Hui made any statements prior to the audio beginning. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Patrol Guide Procedure 221-01 instructs officers on the use of force (**Board Review 22**). It states officers are to protect human life and only use force “to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.” It also states, “MOS will use only the reasonable force necessary to gain control or custody of a subject.”

NYCHA video, BWC video, and his own statement demonstrate Sgt. Hui removed his taser when he exited his vehicle but never pointed it § 87(2)(b). Sgt. Hui did not recall threatening to use his taser in the approximate five-second period it was out and stated he removed it in response to

§ 87(2)(b) rather than § 87(2)(b). Both civilians, however, said he addressed § 87(2)(b) and video shows he approached § 87(2)(b) directly despite the brief command telling § 87(2)(b) not to move. As stated in the previous allegation's analysis, Sgt. Hui's BWC has about ten seconds of the interaction without audio as he approaches § 87(2)(b). While § 87(2)(b) said Sgt. Hui pointed his taser and then threatened him with it, he may have reversed the order and a verbal threat may have happened first. The fact that the first word heard in the BWC is "taser" indicates they may have been talking about it during the silent portion of the video prior to Sgt. Hui removing it, but this is not conclusive. While Sgt. Hui's alleged verbal threat was not recorded, it is possible he made such a threat prior to the BWC's audio engaging. However, § 87(2)(b) testimony alone does not conclusively demonstrate such a threat happened. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Whether to get his documents from his car or to escape police action, § 87(2)(b) attempted to leave after instructions to remain in place and as Sgt. Farrell stopped § 87(2)(b) to address the violations. BWC and NYCHA security footage show Sgt. Hui and Sgt. Farrell used force on § 87(2)(b) only after he began walking away. It is undisputed that as Sgt. Hui grabbed § 87(2)(b) to prevent him from walking away, § 87(2)(b) was trying to pull away from Sgt. Hui. While § 87(2)(b) received injuries related to this interaction, Sgt. Hui and Sgt. Farrell held § 87(2)(b) to prevent him from pulling away and spun him before taking him to the ground. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (J) Abuse of Authority: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Police Officer James Fowler did not obtain medical treatment for § 87(2)(b).

Allegation (K) Force: At the southwest corner of Sutter Avenue and Powell Street in Brooklyn, Police Officer James Fowler struck § 87(2)(b) with a radio.

§ 87(2)(b) remembered PO Fowler and other officers transported him to the 73rd Precinct stationhouse (**Board Review 4**). § 87(2)(b) complained of a pain in his ribs and chest and requested an ambulance, but PO Fowler told him to "man-up" since he was from Brownsville and therefore should be tough, especially with a weapon. § 87(2)(b) thought he may have blacked out in the vehicle as he has memory gaps. § 87(2)(b) thought more force was used on him at that point because his face and head seemed to have new injuries. A friend who saw him later said it looked like officers hit him with their radios.

Later at the stationhouse, after an unknown amount of time, where § 87(2)(b) again believed he passed out, he was brought by ambulance to § 87(2)(b) Hospital without being treated by the EMTs (**Board Review 4**). PO Fowler rode with him and doctors treated him for broken ribs and a collapsed lung. § 87(2)(b) He was then transported back to the 73rd Precinct stationhouse, then onto central booking, before going to Rikers Island, where he was released on bail the next morning.

§ 87(2)(b) medical records and the Threat, Resistance, Injury report confirm his injuries consisted of multiple rib fractures and a 15% collapsed lung (**Board Review 38 & Board Review 39**).

PO Fowler stated he had minimal physical contact with § 87(2)(b) who he had never met, and only guided him in and out of the RMP (**Board Review 12**). Neither he nor any officer struck § 87(2)(b) during the transport and § 87(2)(b) never lost consciousness en route to the stationhouse. PO Kerr was unaware of any issues like § 87(2)(b) losing consciousness or force being used by officers (**Board Review 11**).

At timestamp 1:45 of PO Fowler's BWC, PO Christopher Kalinowski and PO Jonathan Aquino also of the 73rd Precinct, who arrived later, take § 87(2)(b) to a police vehicle. § 87(2)(b) and PO Fowler get in the back seat to be transported to the stationhouse.

Beginning at timestamp 3:36 inside the vehicle, § 87(2)(b) begins to argue he did nothing wrong, and he only picked up the weapon because the area is dangerous (**Board Review 13**). During this transport, PO Fowler's BWC shows § 87(2)(b) sitting still aside from the slight rocking motion of the vehicle as they make their way to the stationhouse and when he scratches his nose at timestamp 5:07. He remains conscious for the approximate two-minute ride and nothing about his speech pattern or language indicates any issues with lucidity. No officer touches him, and he never complains of pain or asks for medical attention.

The first mention of medical attention happens at timestamp 13:50 of PO Fowler's BWC at the stationhouse desk when Sgt. Perritt asks § 87(2)(b) if he needs medical attention (**Board Review 13**). § 87(2)(b) states, "Yeah, I am not going to lie. I don't know, I might have Covid. I'm coughing like a motherfucker." This timestamp corresponds with 2:09 AM. In a second BWC recorded by PO Fowler, after § 87(2)(b) shows an injury on his back and complains of difficulty breathing, Sgt. Farrell announces from off-camera the EMT's arrival at 2:16 AM (**Board Review 14**). Sgt. Perritt, PO Kerr, and PO Fowler all stated EMTs were called upon § 87(2)(b) request at the desk (**Board Review 6, Board Review 11 & Board Review 12**).

Patrol Guide Procedure 210-04 provides guidance when a prisoner requires medical treatment (**Board Review 23**). It states when a prisoner in custody requires medical treatment, officers must either request an ambulance and move the prisoner to a hospital directly from the place of arrest, if necessary, or during processing. In non-emergency situations, prisoners requiring medical treatment, which may result in being admitted to the hospital, should be removed to a local hospital for treatment and evaluation.

BWC by PO Fowler shows § 87(2)(b) transport to the stationhouse was generally uneventful aside from the conversation about where § 87(2)(b) obtained the firearm. He remains conscious and at no point does any officer use any type of force, let alone strikes with a radio. At no point does § 87(2)(b) complain of pain or request an ambulance either. PO Fowler simply sits next to § 87(2)(b) and tells him he is being recorded, warning against making apparently incriminating statements while in custody. § 87(2)(g)

Allegation (L) Abuse of Authority: At the 73rd Precinct stationhouse, Sergeant Michael Farrell strip-searched § 87(2)(b)

Allegation (M) Discourtesy: At the 73rd Precinct stationhouse, Police Officer James Fowler spoke discourteously to § 87(2)(b)

Allegation (N) Abuse of Authority: At the 73rd Precinct stationhouse, Police Officer Everett Kerr threatened § 87(2)(b) with the use of force.

Once at the stationhouse, § 87(2)(b) said he did not go to the front desk but instead to a back hallway with empty cells where PO Fowler told him he thought § 87(2)(b) was faking his injuries (**Board Review 4**). Holding his ribs and on his knees, § 87(2)(b) complained of pain and an

inability to breathe, but PO Fowler told him to, “Get the fuck up,” get in a cell, remove his clothes, spread his “ass cheeks,” and cough. § 87(2)(b) forced himself to cough, but since he was not hiding anything inside himself, there was nothing to find.

When Sgt. Farrell returned to the stationhouse, he went behind the desk where PO Fowler and PO Kerr searched § 87(2)(b) and found a large amount of cash on him (**Board Review 6**). As stated above, Sgt. Farrell’s BWC shows he found this cash in § 87(2)(b) pocket and gave it to PO Kerr (**Board Review 9**). PO Fowler’s BWC shows PO Kerr holding § 87(2)(b) cash at timestamp 10:42 and shows PO Kerr counting it at the desk in front of § 87(2)(b) at timestamp 11:29 (**Board Review 14**). After offering medical attention to § 87(2)(b) and calling EMTs, Sgt. Farrell determined officers needed to strip-search § 87(2)(b) because might have had narcotics or additional weapons on him (**Board Review 6**). He reached this decision on his own based on his training and experience and stated the combination of a firearm found in a drug-prone location, coupled with a large amount of cash led him to authorize such a search. Sgt. Farrell also stated officers needed to ensure that § 87(2)(b) had nothing dangerous on him if he were to go to the hospital.

PO Fowler recalled § 87(2)(b) was strip-searched for the same reasons Sgt. Farrell mentioned (**Board Review 12**). Sgt. Farrell made the determination to strip-search § 87(2)(b) and PO Fowler had no influence on this decision. All three circumstances were necessary, and if one were absent, § 87(2)(b) would not have been strip-searched. PO Kerr did not know why Sgt. Farrell came to that decision but he himself did not request to strip-search § 87(2)(b) (**Board Review 11**). No officer testimony indicates difficulty searching § 87(2)(b) at the desk.

PO Fowler BWC shows PO Kerr counting § 87(2)(b) money and announces a total of \$708.00 at timestamp 12:51 at the stationhouse desk (**Board Review 13**). § 87(2)(b) is generally calm at the front desk and does not appear to be moving in an unusual way, does not appear to reach of anything, nor does he seem to fidget. His demeanor at this point is generally the same as when he was being transported to the stationhouse.

PO Farrell stated that he and PO Kerr brought § 87(2)(b) to the back cells for the strip-search (**Board Review 12**). § 87(2)(b) complained it was somewhat difficult to breathe and took off his shirt prior to the strip-search to show a scratch on his back, however PO Fowler did not recall telling § 87(2)(b) to “man-up,” nor did he tell him to get “the fuck” up. PO Kerr did not recall threatening § 87(2)(b) with force by saying “don’t make me come in there,” nor did he remember any other MOS saying as much (**Board Review 11**). He never heard PO Fowler tell § 87(2)(b) to “get the fuck up” or spread his “ass-cheeks” either.

PO Fowler stated the strip-search followed the standard procedure of being in a private area and unrecorded (**Board Review 12**). PO Fowler politely asked § 87(2)(b) to remove one piece of clothing at a time beginning with the shirt and then pants before checking his shoes. He did not instruct § 87(2)(b) to spread his “ass cheeks,” but rather he said, “Sir, can you please squat and cough.” § 87(2)(b) was not cooperative so his strip-search took about ten minutes, which is about eight minutes longer than normal. § 87(2)(b) did not want to follow the simple directions to remove his shirt or sit down. PO Fowler did not hear PO Kerr say, “Don’t make me come in there” as a threat force against § 87(2)(b). When they did not find anything as a result of the strip-search, they instructed § 87(2)(b) to put his clothes back on. § 87(2)(b) was then transported to the hospital.

While he was not present during the strip-search, Sgt. Farrell did go to the back cells briefly when he heard § 87(2)(b) arguing with the officers prior to the search (**Board Review 6**). He wanted to

make sure his officers were alright and informed § 87(2)(b) EMTs were arriving. At no point did Sgt. Farrell ever hear PO Fowler tell § 87(2)(b) to “get the fuck up” or “spread his ass-cheeks. He could not recall hearing PO Kerr threaten to use force against § 87(2)(b) by saying not to make him go into the cell. The strip-search happened in the back cells, away from everyone for privacy and Sgt. Farrell was not present for it. Sgt. Farrell logged the strip-search in the command log (**Board Review 37**).

Sgt. Hui had nothing to do with § 87(2)(b) subsequent strip-search and had no further interaction with him other than possibly seeing him at the stationhouse in passing (**Board Review 7**).

Patrol Guide Procedure 208-05 defines a strip-search as “any search in which an individual's undergarments (e.g., bra, underwear, etc.) and/or private areas are exposed or in which an individual's clothing is removed, lifted up, or pulled down to expose undergarments or private areas” (**Board Review 25**). Such searches are not part of the standard arrest process and may only be conducted with the “knowledge and approval of the arresting officer’s immediate supervisor or the borough Court Section supervisor” when the arresting officer “reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods.” Officers must describe the factual basis for the request and articulate a “reasonable suspicion that the individual is concealing evidence, contraband, or a weapon.” Other factors to be considered include the nature of the crime (i.e., serious violent felony), arrest circumstances, subject’s reputation (i.e., extremely violent person), acts of violence, unaccounted “hits” on magnetometers or walk-through metal detectors, and any discoveries or information from previous searches of the same individual or others arrested with them.

As Sgt. Farrell and PO Fowler stated, Sgt. Farrell authorized the strip-search based on the following factors: § 87(2)(b) was arrested in a high-crime area, they found a large amount of cash on him, and a firearm was recovered from his waistband. They listed no other reasons for this search. Neither made mention of any “hits” on the magnetometers/metal detectors. No officers made any mention of a history with § 87(2)(b) and PO Fowler stated he did not know § 87(2)(b) § 87(2)(b) does not appear to make any movements on BWC after his arrest and during the transport, indicating he is adjusting hidden items within his clothes or on his person. Furthermore, carrying \$700 is innocuous and not a significant amount of cash to reasonably suspect that § 87(2)(b) was concealing contraband. Furthermore, the reasons listed by these MOS only show the possibility of additional weapons, contraband, or evidence being concealed, but fall short of an “articulable reasonable suspicion” that such items remained hidden on § 87(2)(b) person after the search at § 87(2)(b) arrest location.

Although officers recovered a firearm from § 87(2)(b) waistband, no additional contraband was found, and the recovery of a firearm does not mean § 87(2)(b) was carrying additional weapons or contraband.

§ 87(2)(g)

PO Fowler denied using profanity and PO Kerr could not recall threatening § 87(2)(b) with force. Sgt. Farrell stated he did not hear these officers make these statements either. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 27**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 28**).
- Sergeant Michael Farrell has been a member of service for 12 years and has been the subject in one other CCRB complaint and five other allegations, none of which were substantiated. § 87(2)(g)
- Sergeant Samuel Hui has been a member of service for nine years and has been the subject in 16 other CCRB complaints and 71 other allegations, 12 of which were substantiated (**Board Review 30**):
 - 201610413 involved substantiated allegations of a frisk, a vehicle search, and a discourteous action against Sgt. Hui. The NYPD imposed formalized training.
 - 201904815 involved a substantiated allegation of a question against Sgt. Hui. The NYPD imposed formalized training.
 - 202000291 involved substantiated allegations of failures to provide RTKA cards and a vehicle stop against Sgt. Hui. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
 - 202002456 involved a substantiated allegation of a stop against Sgt. Hui. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
 - 202100719 involved substantiated allegations of physical force, a search of person, a stop, and a discourteous word against Sgt. Hui. The Board recommended Command Discipline A and Command Discipline B and the NYPD has not yet imposed discipline.
- Police Officer James Fowler has been a member of service for three years and has been the subject in five other CCRB complaints and 11 other allegations, one of which was substantiated (**Board Review 31**).
 - 202007818 involved a substantiated allegation of Failure to provide RTKA card against PO Fowler. The Board recommended Command Discipline A and the NYPD has not yet imposed discipline. § 87(2)(g)
- Police Officer Everett Kerr has been a member of service for three years and has been the subject in three other CCRB complaints and eight other allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of December 12, 2021, New York City Office of the Comptroller has no record of a Notice of Claim being filed by or on behalf of § 87(2)(b) in regard to this incident (**Board Review 33**).

- [illegible]

Investigator:	<u>Nick Venduras</u>	<u>Inv. Nick Venduras</u>	<u>Oct. 19, 2022</u>
	Signature	Print Title & Name	Date
Squad Leader:	<u>Patrick Yu</u>	<u>IM Patrick Yu</u>	<u>10/20/2022</u>
	Signature	Print Title & Name	Date
Reviewer:	<u> </u>	<u> </u>	<u> </u>
	Signature	Print Title & Name	Date